

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

No. 9683

BRIEF FOR APPELLANT AND JOINT APPELLEE

733

United States Court of Appeals

DISTRICT OF COLUMBIA

AGNES MARIE SMITH,
Appellant,

vs.

JAMES E. WILSON,
Appellee.

Appeal from the District Court of the United States
for the District of Columbia

United States Court of Appeals
for the District of Columbia

FILED DEC 3 11947

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United States Court of Appeals

DISTRICT OF COLUMBIA

No. 9683

AGNES MARIE SMITH,
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VS.

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Appellee.

Appeal from the District Court of the United States
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BRIEF FOR APPELLANT

I

JURISDICTIONAL STATEMENT

The cause of action set forth in the complaint, involves real property located in the District of Columbia which is owned by the parties as joint tenants; and the unrecorded title deeds thereof. The suit seeks injunctive relief. Jurisdiction of the District Court is conferred by D. C. Code (1940) title 11-305. Jurisdiction of this court is conferred by D. C. Code (1940) title 17-101.

II

STATEMENT OF THE CASE

The parties to this suit are owners, as joint tenants, of lot 46 in square 5895, in the District of Columbia, known as No. 2029 Savannah Place, S. E. Title thereto, as aforesaid, became vested in them on September 7, 1943, by two certain deeds executed and delivered at the office of the Columbia Title Company. Custody of both deeds, for the purposes of recordation, was given to defendant Wilson with consent of plaintiff. The defendant has failed and refused to place the two deeds on record and until he is compelled to do so by a mandatory injunction, plaintiffs interest in the property is jeopardized, because of lack of notice to alienees and/or creditors of defendant.

A written contract of purchase of said property was signed by the then owner and the parties to this suit on May 29, 1942. It was stipulated therein that title was to be transferred to the purchasers as "joint tenants". (Pltff. exh. 1).

On the date for settlement under said contract, about October 15, 1942, the title company reported a small judgment of record against plaintiff which would become a lien on the property if deeded to plaintiff and defendant as stipulated. To avoid that it was arranged, by agreement between them, that title should be taken in the name of defendant until plaintiff satisfied the judgment, when proper transfers would be made to vest the title in both of them.

\$650 was paid as down payment when the owner's deed was delivered, of which sum plaintiff contributed \$400. Thereafter plaintiff took possession of the property and made it her home. She made the monthly payments of \$55 on two trusts on the property and taxes, except a very

few which were paid by defendant. (Pltff. exh. IV). She also expended large sums out of her own funds to improve the property. (Pltff. exh. V).

Plaintiff satisfied said judgment. (app. 12, 13). Thereafter she requested defendant to execute the necessary deed to vest her interest in her. Defendant delayed in doing so but finally, on September 7, 1943, went with her to the Columbia Title Company, on E Street, N. W., where they gave the necessary instructions for the transfer of title to them as joint tenants. (app. 14-16). The title company prepared two deeds for that purpose, one from defendant to Carle Turner, a straw or conduit of title employed by the title company, and the other deed from Turner to plaintiff and defendant, as joint tenants. Both deeds were duly executed and delivered at the title company on said date. (app. 14). When they departed defendant took both deeds with the understanding that he would deposit them at the Recorder of Deeds. (app. 12). He failed to do so and subsequently, without justification, refused to put them on record.

While no act of the defendant, after September 7, 1943, could divest plaintiff of her legal interest in the property and it is still vested in her, nevertheless it will be in jeopardy until the two deeds are recorded. Until then she will have no protection against a junior deed from him and/or claims of his creditors.

The defense to this suit is based on defendant's denials of monies invested in the property by plaintiff and that she had an interest, in utter disregard of his admissions in the contract of purchase and acts at the title company. The evidence adduced in support of the defense was insufficient to defeat plaintiff's claim to equitable relief.

When the taking of testimony was concluded the court announced a "finding for the defendant". (app. 34). On May 26, 1947 plaintiff moved for judgment in her favor

notwithstanding the court's finding. (app. 6). On May 29, 1947 the court signed its final order in the case, directing that "a finding for the defendant be entered." (app. 5, 6). So far as the record is concerned that is the only order approaching a judgment and it is the one appealed from. By order of June 10, 1947 the court denied plaintiff's motion for judgment. (app. 7).

III

POINTS RELIED ON

1. The evidence in the case is insufficient to support the court's finding for defendant.

2. The court erred in not rendering judgment for plaintiff, as moved. (app. 7).

3. Plaintiff's title as a joint tenant with the defendant became vested in her on September 7, 1943 when two deeds were executed and delivered at the Columbia Title Company whereby title was transferred from the defendant, and the court below erred in not granting a mandatory injunction to require defendant to place the two deeds on record, as prayed in the complaint.

4. The court erred when it hinged its decision on the testimony of plaintiff concerning the execution of a note given to a construction company for improvements to the property. Defendant's name appeared on this note with plaintiff's, as joint maker, and she denied that she signed his name. She paid the note out of her own funds, and the property benefitted. As this circumstance, whether true or false, was not important and could not outweigh other and incontrovertible evidence, both oral and documentary, adduced in support of the complaint, it was error to base the finding for defendant on that circumstance alone.

5. Plaintiff's claim of interest is supported also by evi-

dence showing acts of ownership, such as moving into and establishing her home on the property, and the expenditure of large sums of money on the property, out of her own funds.

IV

SUMMARY OF ARGUMENT

1. Under the law in this jurisdiction, governing the time when deeds take effect, D. C. Code (1940), title 45-501, plaintiff's title as a joint tenant became vested in her on Sept. 7, 1943, when defendant deeded the property in fee to one, Carle Turner, and he in turn deeded to plaintiff and defendant, as *joint tenants*. Both deeds were duly executed and *delivered* and plaintiff's title took effect from *delivery* of Turner's deed. (app. 14).

No subsequent act of the defendant, such as withholding the two deeds from record, could divest plaintiff of her title.

However, equitable relief is required to protect her interest against alienees and/or creditors of the defendant without notice of said two deeds. Only recordation will accomplish this and plaintiff is clearly entitled to such relief on the whole evidence.

2. Defendant has been a mere custodian of these title deeds since September 7, 1943 and still is.

3. There is insufficient evidence to support the court's finding.

V

ARGUMENT**The Evidence Was Insufficient to Support the Court's Finding for the Defendant**

The evidence adduced in defense was principally the testimony of defendant himself. It was mostly negative in character and consisted of denials of statements in plaintiff's testimony. It was not clear and convincing. If any documentary evidence to support his testimony existed it was not forthcoming. This is particularly true in regard to payments claimed to have been transmitted by him to be applied on two trusts on the property. (app. 22). On cross-examination he was contradicted and impeached concerning his age by an affidavit executed by him when he was an applicant for a job. (Pltff. exh. III). His testimony is entitled to no weight.

Uncontradicted Evidence in the Case Clearly Entitles Plaintiff to the Relief Sought

In and by the contract of purchase defendant admitted that plaintiff was a joint purchaser of the property; that she shared the deposit on the property; and that she was entitled to share title with him as "joint tenants".

In the stipulated facts, conceded by defendant's counsel at the trial (app. 14, 15) plaintiff and defendant appeared at the office of the Columbia Title Company together on September 7, 1943 and there gave instructions (app. 15) which resulted in the preparation of two deeds for the purpose of transferring title to the property from defendant to both parties, as joint tenants; the deeds were duly executed, one by the defendant to the "straw" Turner and the other by said straw to plaintiff and defendant, as joint

tenants; said deeds were duly delivered to the grantees and taken away by defendant.

When they left the title company with the deeds, after he volunteered to record them (app. 12), he became a mere custodian or bailee for that sole purpose.

At common law, a deed is valid between the parties which is signed, sealed and delivered, though not recorded.

Munsey Trust Co. v. Alexander, Inc., 59 App. D. C. 42 F (2d) 604.

In the case of *Bralove v. Bralove*, Dist. Ct. of D. C., 57 F. Suppl. 1016, decided Nov. 27, 1944, Justice Pine held that an unrecorded deed from a straw, in the possession of the straw's grantor, was good as between the parties to the straw's deed.

In the case of *Austin v. Fendall, et al.*, 2 MacArthur, D. C. 362, a deed was duly signed, sealed and delivered but left in the possession of grantor to be recorded. He neglected to do so and left a will disposing of all his real property. The deed was found among decedent's papers but his executor refused to deliver it up on demand of the grantee. The court held that the grantee was entitled to the equitable relief prayed and ordered that the deed be surrendered by the executor.

While there is no question of law or fact concerning the signing, sealing and delivery of the two deeds in the case at bar, the following decisions are cited merely to show that delivery of a deed to one of two joint grantees is a delivery to both.

Eshleman v. Henrietta Vineyard Co., 102 Cal. 199, 36 Pac. 579.

Minor v. Powers, Tex. Civ. App., 24 S. W. 710, aff'd in 87 Tex. 83, 26 S. W. 1071.

Benson v. Hall, 150 Ill. 60, 36 N. E. 947.

As admissions against interest, the defendant is bound

by the statements in the contract of purchase, subscribed by him, and by his acts at the title company, such as instructions given it in regard to the transfer of title; his execution and delivery of his deed to the "straw" Turner; and acceptance of Turner's deed drawn to plaintiff and himself, as joint tenants. By no act of his, short of fraudulent alienation, can defendant defeat plaintiff's vested interest. Withholding the two deeds from record will not do so, nor would destruction of the deeds do it.

The only effect of withholding the deeds from record is to cloud the title and deceive creditors who may extend credit to him on the basis of his record title, not knowing that he has transferred the title out of himself. Equity will not permit the perpetration of such fraud.

The testimony of plaintiff concerning execution of the note for construction work done on the property, whether true or false, was about a minor matter not material to the determination of the case and it was error for the trial court to hinge its decision on the falsity of the testimony in that regard.

The note in question was introduced in evidence to corroborate plaintiff's oral testimony as to acts of ownership and the evidence showed that she, not the defendant, paid same. He made no claim that he paid any part of it, nor did he testify that he had not authorized her to make the note.

It clearly appears that there was sufficient incontrovertible evidence in the case to warrant a finding of fact and judgment for plaintiff. If plaintiff's testimony were disregarded, the other evidence in the case entitled her to the equitable relief sought. But most of her testimony was fully corroborated and uncontradicted and it was error for the court to disregard all evidence adduced by plaintiff, including the documentary evidence and the concessions of

defendant's counsel on the trial (app. 14, 15) and find for defendant notwithstanding the admitted facts.

Plaintiff was entitled, on the whole record, to judgment notwithstanding the court's finding of fact, at the conclusion of the trial, as requested in plaintiff's motion (app. 6), and it was error to deny said motion (app. 7).

Conclusion

For the foregoing considerations appellant asks that this court reverse the final order below and remand the case with directions to enter judgment in favor of plaintiff, mandatorially enjoining the defendant to put said title deeds on record forthwith and for other and appropriate relief if defendant fails to comply or has put it beyond his power to comply.

Respectfully submitted,

EDWARD S. DUVALL,

327 Colorado Building,

REUBEN K. MILLSTEIN,

917 15th Street, N. W.,
Washington, D. C.

Attorneys for Appellant.

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United States Court of Appeals

DISTRICT OF COLUMBIA

No. 9683

AGNES MARIE SMITH, *Appellant*,

v.

JAMES E. WILSON, *Appellee*.

Appeal from the District Court of the United States
for the District of Columbia

JOINT APPENDIX TO BRIEFS

**PLEADINGS, DOCKET ENTRIES AND OTHER
PAPERS**

74 **IN THE DISTRICT COURT OF THE
UNITED STATES FOR THE
DISTRICT OF COLUMBIA**

**AGNES MARIE SMITH,
2029 Savannah Place, S. E.,
Plaintiff**

vs.

**JAMES E. WILSON,
820 Burke St.,
Philadelphia, Penna.,
Defendant**

Civil Action No. 33941

Filed Mar 27 1946 Charles E. Stewart, Clerk

**Complaint to Establish Title as Matter of Record
(Lot 46 Square 5895)**

The Complaint of Agnes Marie Smith respectfully represents to this Honorable Court as follows:

1. That she is a citizen of the United States and a resident of the District of Columbia, and files this action in her own right.

2. That defendant is a citizen of the United States and a resident of Philadelphia, Pennsylvania, and is sued in his own right.

3. Heretofore, to-wit, on or about October 15, 1942, the defendant became seized in fee simple of the following described real estate situated in the City of Washington, District of Columbia, to wit: Lot forty six (46) in Square Fifty eight ninety five (5895), also known as 2029 Savannah Place, S. E.

4. That at the time the defendant became seized of the aforesaid real estate, there existed an agreement by and between plaintiff and defendant that said real estate shall be owned by these parties jointly, that the said real estate was originally purchased in the names of both plaintiff and

defendant, but that in view of various claims and
75 judgments then existing against plaintiff, it was
arranged to have the property purchased in the
name of defendant, and deed accordingly was executed
in defendant's name and entered on the land records of
the District of Columbia. It was further agreed however,
that the aforesaid real estate would at some later date
convenient to plaintiff; be conveyed by deed to her and
defendant jointly.

5. That at the time of purchase of the property the
sum of about \$650.00 was paid as the down payment on
the same, that of the said amount, \$400.00 was paid by
plaintiff and \$250.00 by defendant, that the plaintiff has
made her home in the said property since the time of pur-
chase, she has made all of the monthly payments of \$55.00
a month on two trusts existing against the property, which
trusts are owned by the District Building Loan Associa-
tion and by the Chamberlin Engineering Company; with
the exception of a few monthly payments, made by the
defendant. Taxes on the property are included in the
aforesaid monthly payments. Plaintiff has also made im-
provements on the property since time of purchase of
about \$302.97, consisting of constructing storm windows,
erecting a fence, a recreation room, and painting work.

6. That on September 7, 1943, and as requested by
the plaintiff in pursuant to their agreement as alleged, de-
fendant did actually convey by deed the aforesaid real
estate to one Carle W. Turner of the District of Columbia,
for the purpose of conveying it to plaintiff and defendant,
and at this time the property was actually deeded to these
parties by the said Carle W. Turner, which deeds were
prepared for the benefit of plaintiff and defendant by
the Columbia Title Insurance Company of the District of
Columbia, and executed in their offices. That subsequent
thereto it was agreed and understood by plaintiff
76 and defendant that the defendant who was given
the executed deeds; would record them as a matter

of record in the office of the Recorder of Deeds for the District of Columbia, but which he failed to do and still refuses so to do.

THE PREMISES CONSIDERED, plaintiff prays:

1. That a Writ of Subpoena issue from this Honorable Court, directing the defendant to answer the exigencies of this complaint.

2. The defendant be directed to record the deeds executed on September 7, 1943, among the land records of the District of Columbia.

3. To establish title in the property to plaintiff and defendant as joint tenants, by decree.

4. The defendant be restrained from mortgaging, leasing, selling or renting the property.

5. And for such other and further relief as the nature of the case may require and to this Honorable Court may seem meet and proper.

AGNES MARIE SMITH
Plaintiff

REUBEN K. MILLSTEIN
Attorney for Plaintiff

917 - 15th St. N. W. Na. 6273

DISTRICT OF COLUMBIA, ss:

Agnes Marie Smith, being first duly sworn according to law on oath deposes and says that she has read the foregoing Complaint by her subscribed, and knows the contents thereof, that the matters and things herein stated to be true are true, and those stated upon information and belief, she verily believes to be true.

AGNES MARIE SMITH

Subscribed and sworn to before me this 25th day of March, 1946.

KATHRYN C. KELLY
Notary Public, D. C.

• • • •

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Answer of Defendant James E. Wilson

Comes now the defendant, James E. Wilson, a defendant in the above entitled by his attorney, Charles A. Schaeffer, and for answer to the complaint herein presented, states as follows:

First Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

Any money paid by the plaintiff upon the property in question was paid from money sent to her by the defendant for that purpose: that any money spent by the plaintiff on the property mentioned in the complaint was made by her without the consent or approval of the defendant.

Third Defense

The defendant admits the allegations contained in paragraph one, two and three; and denies each and every other allegation contained in the complaint.

CHARLES A. SCHAEFFER

Attorney for Defendant

406 - 5th Street, N. W.

Washington, D. C.

Copy mailed to Reuben K. Millstein at 917 - 15th St., N. W., Washington, D. C., this 16th day of April, 1946.

* * * *

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Order

After hearing all the evidence offered by the Plaintiff and the Defendant, in the above entitled cause and after hearing arguments by Counsel for the respective parties, it is hereby this 29th day of May, 1947.

ADJUDGED, ORDERED and DECREED that a finding for the Defendant be entered.

MATTHEW F. McGUIRE
Justice

* * * *

S1 **Motion for Judgment Non-Obstante Veredicto**

Comes now the plaintiff by her attorney and moves the Court to render judgment for the plaintiff, notwithstanding the Court's findings and for grounds thereof shows to the Court:

(A.) That on the record made in this case the only evidence requiring the consideration of the Court is whether the defendant is in possession of the two deeds which plaintiff's prayer No. 2 prays that he be enjoined to record in the office of the Recorder of Deeds of the District of Columbia. It was stipulated in this case that the defendant received said deeds and the unrebutted inference is that he still has them.

(B.) For further grounds of this motion, it is pointed out that all the evidence in the case in regard to contributions made by the respective parties in acquiring the property with the exception of the contract of sale dated May 29 1942 is wholly immaterial to the issues in this case and should not be considered by the Court.

(C.) And for other grounds to be urged in the hearing hereof.

REUBEN K. MILLSTEIN
Attorney for Plaintiff
917 15th Street, N. W.
Washington 5, D. C.

EDWARD DUVAL
Atty for Plaintiff
Woodward Bldg.

* * * *

82

June 10, 1947

MEMO:

Treating the Motion for Judgment, non obstante veredicto as a Motion for New Trial, which is the proper procedure for plaintiff to have pursued, the Motion is by the Court DENIED.

MATTHEW F. McGUIRE
Associate Justice

Smith v. Wilson, C. A. 33941

* * * *

83 IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

AGNES MARIE SMITH,
Plaintiff.

v.

JAMES E. WILSON,
Defendant.

Civil No. 33941

Notice of Appeal

Notice is hereby given this 22 day of August, 1947, that Agnes Marie Smith, plaintiff, hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 29 day of May, 1947, in favor of defendant, James E. Wilson, against said Agnes Marie Smith.

R. K. MILLSTEIN
Attorney for Plaintiff
EDW. DUVALL
Atty for Plaintiff
917 15th St. N. W.
Na. 6273

Mail Copy to
Charles A. Schaeffer,
Atty for Defendant,
406 5th St. N. W.

II

EXCERPTS FROM TESTIMONY AND PROCEEDINGS

* * * *

5 **Agnes Marie Smith** was produced as a witness in her own behalf and having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Millstein:

Q. Will you please state your full name? A. Agnes Marie Smith.

Q. And where do you live? A. 422 21st Street, Northeast.

6 Q. Just what do you do for a living? A. I am a beautician, located at 3114 11th Street. I have been there 12 years.

Q. Do you know Mr. Wilson, the defendant? A. Yes, I do.

Q. How long have you known him? A. For around 12 or 14 years—I would say around 12 years.

* * * *

Q. When did you have this arrangement with him in regard to the purchase of this property at 2029 Savannah Place, Northeast? A. In May of 1942—late in May.

Q. Is this a contract that was signed for the purchase of this property? A. It is.

Q. Is this your signature? A. That is my signature.

7 Q. Is that the signature of Mr. Wilson (indicating to witness)? A. Yes, sir.

* * * *

(The document referred to was marked and received in evidence as Plaintiff's Exhibit No. 1.)

* * * *

By Mr. Millstein:

Q. Did there come a time when a settlement was

reached for the purchase of this property? A. Yes, there was.

* * * *

Q. Where did that take place? A. At the District Building, at the Columbia Title Building.

8 Q. How much of the purchase price of that property did you pay in yourself? A. \$250 and all of the excess expenses; that is, the settlement expenses.

Q. And how much did Mr. Wilson pay? A. The \$250.

Q. Did there come a time when this property was deeded to Mr. Wilson? A. Yes.

Q. When was that? A. In October of 1942.

Q. Why was that property deeded to Mr. Wilson alone? A. Mr. Lindsay came and told me there was a judgment against me and it could not be in my name and suggested I have someone else on the deed with Mr. Wilson.

I told him all right, to put it in Mr. Wilson's name.

I had befriended him, he was like a son to me, so I said all right to put it in his name until I had the money to pay off the judgment.

* * * *

9 By Mr. Millstein:

Q. Now, I don't recall your testimony about the arrangement with Mr. Wilson about the purchase of this property. What did you agree on, what was your understanding? A. He said if I would pay half, he would pay half on the place, and it would be our home; that was our agreement.

Q. Did you have anything in writing?

THE COURT: Just a minute, the agreement indicates, the agreement of sale indicates the parties were to take title as joint tenants.

By Mr. Millstein:

Q. Did you move into this property after it was purchased? A. I did.

Q. And when was that? A. I moved into the property in July of 1942.

Q. And until when did you live in that property?

10 A. Until July, 1946.

* * * *

Q. What arrangement did you have? A. I was supposed to make the payments on the property because I lived there and unless he was here and he would make them himself.

I made them to Chamberlin at 50 Kennedy Drive, Chevy Chase. They were owners of one of the mortgages.

Q. Was there another? A. Yes.

11 Q. Did you make payments on both to Chamberlin? A. Yes.

Q. How much did you pay? A. Fifty-five dollars.

Q. Did you make those payments every month from the time you purchased the property until the time you moved out? A. Unless he was here I made them, and I think that was three different times during the time I was in the house.

Q. Would you say you made the payments every month during that period except the three different times you have mentioned? A. Yes.

THE COURT: When did you move out?

THE WITNESS: July, 1946.

THE COURT: Who has been making the payments since?

THE WITNESS: I don't know. I know the house was rented.

By Mr. Millstein:

Q. How did you make these payments; did you go there yourself? A. I sent the money orders.

* * * *

Q. Are these some of the receipts for these rent payments (handing papers to witness)? A. They are.

12 THE COURT: I don't care to look at them.

Are they rent payments, or on the mortgage?

THE WITNESS: Payments on the mortgage. They are not rent payments. I paid them.

THE COURT: Paid them to whom?

THE WITNESS: To Chamberlin.

* * * *

Q. What happened prior to the time you moved out of the property? A. Well, I had got a landlord's notice to move out of the property.

* * * *

13 Q. I notice these receipts are made out in the name of Mr. Wilson. A. They are made out to him because the property was in his name.

I wrote them and asked them about it, and they told me because the property was made out that way.

MR. SCHAEFFER: I would like to ask one question, if I may:

Did they answer your letter?

THE WITNESS: Yes.

By Mr. Millstein:

Q. Did you ever ask them to make the receipts out in your name? A. Why did they not?

Q. Didn't it ever occur to you to have them made out in your name? A. I asked them why they did not.

Q. What did they tell you? A. That the house was made out in Mr. Wilson's name.

Q. What else did they say, that they could not make them out in your name? A. They did not say they could not. They said that was the reason they did not make them out in my name.

* * * *

15 By Mr. Millstein:

Q. Do you know when Mr. Wilson was born?

A. Do I know when he was born?

Q. Yes. A. As far as I know, April 20, 1920.

Q. What brings that to your mind? A. His CCC camp discharge.

Q. Did you ever see his discharge? A. I kept it until a couple of years ago.

* * * *

Q. Now, directing your attention to September of 1943, what happened then about this arrangement? A. I had paid off the judgment; I had asked him for several months to go with me to the title company to have it deeded in his name and mine.

He would say he did not have time.

Eventually, he came down one day and he said he would go down. He had called Mr. England before that and he said—

THE COURT (interposing): You went to the title company?

THE WITNESS: I think they called it a straw party, came and signed something. I paid \$18 to the title company.

By Mr. Millstein:

16 Q. What happened to that deed? A. James kept the deed.

Q. What was he supposed to do with it? A. He was supposed to have it recorded.

Q. Did he have it in his possession when he left the title company? A. He said Mr. England gave it to him; he was supposed to go to the Recorder of Deeds.

Q. Did he go there? A. No.

Q. What did he tell you? A. He said he wanted to keep it a while and he would take it there and have it recorded.

Q. Did you ask him when? A. Yes. Twice I made a trip to Philadelphia to ask about it and each time he would give me some excuse for not doing it.

* * * *

18 By Mr. Schaeffer:

Q. These papers were never delivered to you, were they? A. I don't know what papers you are referring to.

Q. These deeds you are telling about. A. The last one, no.

Q. Where is the Columbia Title Company? A. Sixth and E Street.

Q. Fifth and E, or Sixth? A. I don't know whether it is Fifth or Sixth.

Q. You were with Mr. Wilson then? A. Yes.

19 Q. It is just a block from the Recorder of Deeds? A. Right.

* * * *

Q. And you paid the judgment off early in the summer— A. (Interposing) Early in the summer of 1943, and I did not get a receipt, so I wrote to them and asked why they did not send a receipt. They told me it had been satisfied and after receiving the letter about the deed—

* * * *

20 THE COURT: When did you lose this other house that you speak of?

THE WITNESS: In 1942.

THE COURT: You lost it for nonpayment of the trust?

THE WITNESS: Right.

THE COURT: How much were you paying on that?

THE WITNESS: Fifty-five dollars.

THE COURT: Did you own any other property at that time?

THE WITNESS: No.

THE COURT: That is all.

MR. MILLSTEIN: I want to show the Court this pre-cipe she has referred to, that this judgment was satisfied, in November, 1943 (handing document to the Court).

This is the Court record.

THE COURT: All right.

* * * *

William W. England was produced as a witness on behalf of plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Millstein:

21 Q. Will you please give your full name?

A. William W. England.

Q. Where are you employed, Mr. England? A. At the Columbia Title Company.

Q. What is your position there? A. I am settlement clerk.

The Court: I want you to make an offer for the record as to what you propose to prove by this witness.

Mr. Millstein: Mr. Wilson and Mrs. Smith in September, 1943, executed a deed—I don't have it at the moment—

By Mr. Millstein:

Q. I will ask you this question: You attended to them at the time, both appeared there for the purpose of having a deed prepared, showing this particular property, in the name of both Mrs. Smith and Mr. Wilson; that a deed was prepared to Carl Turner, a straw man, and he deeded to both these parties; the deed was acknowledged and you were just paid for your services and that the deed was given to Mr. Wilson.

Mr. Millstein: That is what I want to ask the witness.

The Court: That is the first of his testimony.

Mr. Schaeffer: I stipulate to that, Your Honor.

The Court: Who paid for the settlement that day?

The Witness: I have no record of which one paid. We were paid.

The Court: Who is Mr. Carl Turner, is he an employee of the Columbia Title Company?

22 The Witness: Yes.

The Court: Is he present in court?

The Witness: Yes.

The Court: What was the date?

The Witness: September 7, 1943—for these two deeds.

The Court: You are testifying presumably from your record; that was the date that happened?

The Witness: That is right.

Mr. Millstein: This entry, it was filed.

The Court: Very well.

Mr. Millstein: Has that been stipulated to?

The Court: That is right.

By Mr. Millstein:

Q. Mr. England, do you recall any conversation at all between these two parties on that occasion? A. No, I do not.

* * * *

The Court: Were these prepared by the title company?

The Witness: Yes, sir.

The Court: You did not keep copies of the deeds?

23 The Witness: Copies of the orders.

Here are the orders for the two deeds; just our sheet where they were ordered to be drawn. They are sent to the conveyancing room.

The Court: Your memoranda on the form designed for that purpose indicates that at the time these people were present before you; that they were present before you?

The Witness: Right.

The Court: And that there was an order prepared on the form referred to, grantors James E. Wilson, Jr., unmarried, and the grantee, Carl Turner, subsequent grantor Carl Turner and grantees James Wilson and Mrs. Smith as joint tenants?

The Witness: Yes, sir.

The Court: That is in your handwriting (indicating)?

The Witness: No, an officer of the company.

The Court: That is all.

Mr. Millstein: With respect to Mr. Turner, Your Honor, I talked to him and he informed me he couldn't

quite recall this particular incident; that he acted as straw party.

The Court: I will take a record he was the straw man on that occasion.

He can be excused.

Mr. Millstein: That is the plaintiff's case, if the Court please.

* * * *

24 James Edward Wilson, Jr., was produced as a witness in his own behalf, and having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Schaeffer:

Q. Will you please state your full name? A. James Edward Wilson, Jr.

Q. And you were born April 20, 1924? A. Yes, sir.

Q. Where were you born? A. At Braddock, Pennsylvania.

Q. What is your business? A. I am a fighter, labor foreman for different contracts. I fought last night.

Q. And how are you known? A. As James Slugger Wilson.

Q. When did you meet the plaintiff in this case? A. I met Mrs. Smith about 1933 or 1934.

* * * *

25 She asked me if I wanted to go to school and said if I did she would send me.

She gave me a key to the shop.

She asked me where I lived, and I told her I lived with a white fellow, a newspaper man.

She gave me the key to the shop to clean up. It went like that.

I was in some sort of jam with the probation officer, the school probation officer, and Judge Bentley sent me to the CCC camp.

THE COURT: The probation officer suggested that you go there?

THE WITNESS: That was from 17 to 21.

The Court: When was all this?

The Witness: In 1938.

The Court: In 1938?

26 The Witness: Yes, sir. I went in 1938 and came out in 1940. I stayed—

The Court (interposing): You went there at the suggestion of the school authorities?

The Witness: The probation officer.

The Court: The probation officers suggested you go to the CCC camp:

The Witness: Suggested my going to school, but instead I went to CC camp.

By Mr. Schaeffer:

Q. He had nothing to do with your going to the CC camp? A. He suggested going to school but I signed up for the CC camp instead.

Q. How much school did you have? A. I went with the Maritime Service. I haven't had any schooling in 1943, and I worked for them until 1946.

Q. By the way, when this original contract of sale was signed, how old were you then? A. About the age of 19 or 20. I came out of camp one year, and stopped by to see Mrs. Smith on Irving Street.

I was born in 1924 and that was in 1940.

We bought the house in 1942.

The Court: How old were you then?

The Witness: Twenty.

The Court: You are 23 now.

By Mr. Schaeffer:

28 Q. Were you in the first draft? A. In the 1945 draft, the second.

29 Then I got a telegram from Mrs. Smith saying she was in trouble. She said she could not pay for

it, her husband wouldn't buy it—the payments on the house until they got up to six thousand five hundred.

I told her to make some kind of an arrangement. She mentioned about her house was sold for sixty-five hundred dollars—1318 Irving Street—sold for sixty-five hundred dollars; that her home was taken from her because her husband and she could not pay for it.

I bid on it and tried to buy it myself, but I did not have that much money, and she didn't have a dime.

The Court: How much did you have?

The Witness: Around about twelve hundred dollars and two cars, a De Soto—

* * * *

Q. Before you purchased this house on Savannah Street? A. In 1941 she lost her home. After she lost her home, Mrs. Smith had some furniture. She told me she wanted to go to Chicago and live with her sister; she didn't want to sell the shop.

I let Mrs. Smith have \$500 for the furniture. I bought it. My girl friend was working for a real estate firm. She and I went there and purchased a home on Nash Road; didn't want to put it in her name. We were not married. Mrs. Smith said don't do it. She said to deed the home to Mrs. Smith.

Q. How old were you then? A. About 20, 19 or 20.

* * * *

31 By the Court:

Q. You were not in the military service? A. The Maritime Commission.

Q. What is that button (indicating)? A. The Maritime Service.

Q. Why are you not wearing an Army button? A. I better take it off (witness takes button out of coat lapel). A fellow has my suit on.

Q. You better take it off. A. Yes, sir.

Q. You were in the Maritime Service? A. Yes.

Q. When? A. September, 1943.

Q. You remained how long? A. I came out in 1945.

Q. What time in 1945?

* * * *

33 A. I have made a second deed for the home.

Mrs. Smith said, "You could leave the property to someone to look after it while you are away."

We won't have it recorded. If anything happens, you can have the deed.

Q. How much money did she pay? A. She never gave one dime; never had one. If so, I never seen it.

Q. Who paid for it? A. I was transferred to different ports. I sent it to Miss Farnham. Then I sent them to Mrs. Smith. Then Miss Farnham asked me why I was so far behind.

Mrs. Smith got some old receipts like 1943 and I took them to Miss Farnham, and she showed me the originals I'd pay up all the back money. I did.

I started sending them to Mrs. Smith again. She
34 got behind again. They asked why I was behind this time. She said she had an operation and didn't pay attention.

Then she started renting the house out. I told her she should pay the notes herself. She said she was not going to pay until she got the deed. She rented a room to her nephew for \$60. Her nephew wanted to fight me. I hit and missed him.

Q. The only time you put Mrs. Smith's name on that deed—the reason was if you did not come back, it would go over to her? A. Yes.

Q. Everything was all right; the payment—that is correct? A. Yes.

Q. When you were in the service, that is when you got behind? A. Yes.

Q. Did you ever go to school at all? A. Not as I know

of. I lived with Mrs. Smith ten years and she will tell you.

Q. You never went at all? A. No.

* * * *

35 By Mr. Schaeffer:

Q. Have you your draft card, of any kind? A. Yes, sir, I do.

Q. Let's see it. A. (Witness hands card to Mr. Schaeffer.)

Q. Which draft were you in? A. Third, 1945.

Mr. Schaeffer: I offer this, if Your Honor please.

The Court: It will be received as Defendant's Exhibit No. 1.

(The document referred to was marked and received in evidence as Defendant's Exhibit No. 1.)

By Mr. Schaeffer:

Q. How old were you in September of 1943? A. Nineteen.

* * * *

36 Q. And you were under 21 in 1943 when you signed these deeds? A. Yes, sir.

* * * *

Cross Examination

By Mr. Millstein:

Q. Mr. Wilson, you are now how old, sir?

The Court: Is there any question of the original conveyance—the original conveyance by this witness on the theory he is a minor?

Mr. Schaeffer: The first contract—the first contract was declared because of the fact that Mrs. Smith—

The Court (interposing): Subsequently, the property was conveyed?

Mr. Schaeffer: We make no point that the deeds were signed and all that.

The Court: There is no point that he is a minor—as to his minority; you make no point of that?

* * * *

37 Q. Do you remember signing an affidavit in September, 1943, in which you made an affidavit—

A. To get a job at the shipyard in Pennsylvania.

38 Q. And you had two other people make an affidavit vouching for you, that you were born April 20, 1920? A. Correct.

Q. Is that your signature (handing a document to the witness)? A. It looks like it.

Q. You appeared before a notary public in Philadelphia? A. I don't know who he was.

Q. Mr. Joseph Jacobs? A. I really don't know.

Q. You don't know? A. No.

Mr. Millstein: I want to introduce this in evidence, if the Court please.

The Court: Very well.

Mr. Millstein: Is there any objection to this?

Mr. Schaeffer: If he says he made it, there is no objection to anything he made. We don't want to keep anything out.

* * * *

By Mr. Millstein:

Q. This says—when you appeared before this notary public, Mr. Wilson, you swore that this was the truth, did you not? A. I did not.

39 Q. Then it was not the truth? A. I did not swear to anything.

Q. You appeared before this notary public?

The Court: It speaks for itself.

* * * *

40 By Mr. Millstein:

Q. You said you made all the payments? A. I made them all.

Q. Now, how did you make them? A. Miss Farnham,

in person; sent them to her or sent them to Mrs. Smith there.

I would walk in and give Mrs. Smith the money and leave, and to Miss Farnham and leave.

I sent them by Western Union, they took care of it. Western Union to Mrs. Smith in person or Miss Farnham in person.

Q. You say you sent them to Miss Farnham? A. Sitting behind you, Miss Farnham.

Q. How many times in those four years would you say actually saw—

* * * *

41 Q. During that four years how many times did you go to Miss Farnham and hand her the rent?

A. I could not say.

Q. Five times? A. More than that.

Q. Ten times? A. More than that.

Q. Twenty times? A. Around that.

Q. Around twenty times? A. Yes.

Q. When did you give Mrs. Smith— A. (Interposing) If I didn't send her, Doris Fleming in Philadelphia sent them.

Q. Doris? A. Doris Fleming.

42 Q. She lives in Philadelphia? A. I would give it to her, bring it myself.

Mr. Schaeffer: What is that address in Philadelphia?

* * * *

The Witness: 1949 North Ninth Street, and 820 West Birch Street.

By Mr. Millstein:

Q. You say you would use this money and buy money orders? A. I have told you they were money orders.

* * * *

Q. You say you would buy money orders? A. That I can't answer. I know Miss Farnham sent back receipts.

Q. How many receipts? A. That I could not answer.

I would get receipts from Miss Farnham, she would send to me, send to Mrs. Smith. Mrs. Smith kept them, until she had the gas and all changed in her name; she got all the bills and all the papers.

43 She kept all the receipts, sent the money from Philadelphia, Pittsburgh and from Brooklyn.

Q. Now, in the early part of this whole situation, Mr. Wilson, in May, 1942, right before the time you began to buy this property, wasn't it a situation where you and Mrs. Smith found that you both might be out of a home?

A. I never was out of a home.

Q. You were not living there? A. I left Mrs. Smith when her husband asked her to move. She was the one who was out of a home; not me.

I am never out of money.

She slept in her beauty shop, on the floor, when I got one for her.

* * * *

By Mr. Millstein:

Q. How old were you when you first met Mrs. Smith?

A. I met her when I was very small, nothing but a youngster when I met Mrs. Smith, between eight and ten. Because I got permitted to sell papers.

44 Q. How long after that? A. I never lived with Mrs. Smith until 1940, about three months, after I got out of the CC camp.

I never went to her house but once in my life, to do some work for her, on Christmas time she gave me—

Q. (Interposing) She was kind to you? A. Always kind. I was a friend of hers and she was a friend of mine.

* * * *

A. Can I explain in my own words?

Q. Surely. A. As I explained, I was going with Doris. We were engaged to be married. At the time we were going to have a kid. Mrs. Smith broke up the engagement—

* * * *

45 **THE COURT:** You said you were engaged to a girl, you were to be married to her, you had a child by her, and Mrs. Smith broke it up.

The Witness: Because after the engagement was broke up, I had no one to turn to, to join up with me, and as Mr. Lindsay said, I had no one to sign whatever.

The Court: You made this arrangement after you broke up the engagement, is that it?

* * * *

What I want to tell you, Mrs. Smith had no connection with my home. I bought it and paid for it myself. Miss Farnham can tell you the same thing.

* * * *

46 **By Mr. Millstein:**

Q. About your age, so you could buy this property. When you went to the Columbia Title Company in September, 1943, you also signed a deed, did you not? A. Yes, sir.

Q. On the basis of your age as you mentioned in court here—born in 1924; you still were not 21? A. No.

Q. Did you realize that at that time?

The Court: How material is that?

Mr. Millstein: I don't think it is so material.

The Court: It is not material at all.

* * * *

47 **Ruth Hale Farnham** was produced as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Schaeffer:

Q. Will you give your full name? A. Ruth Hale Farnham.

* * * *

Q. Where are you employed? A. In Kenwood, Maryland, Mr. Donald Chamberlin's personal secretary.

Q. How long have you been so employed? A. Fourteen years.

* * * *

Q. How long have you known Mr. Wilson? A. I haven't any idea.

The Court: How long would you say, approximately; a year, two years?

The Witness: About a year.

By Mr. Schaeffer:

48 Q. How many times have you seen him in that year? A. About four times.

Q. And what was the occasion for seeing him? A. Coming out to make payment on the house or to see why he had not made payments on the house.

* * * *

A. According to my records, all of the transactions were with Mr. Wilson because he signed both trusts, the notes and the property was deeded in his name.

* * * *

The Court: The payments on this trust are now current, are they?

The Witness: No, behind.

49 The Court: Is the month of May due?

The Witness: The month of May, April, March, and part of February are still due.

* * * *

50 By Mr. Chamberlin:

Q. Now, did there come a time whenever you had some—you have stated as far as you know, of record, the payments were made by Mr. Wilson? A. I have no other method at this time.

Q. Did there come a time when you wrote a letter to Mr. Wilson with respect to the payment, the method at which he was paying these sums of money? A. Not to send them either by telegraph or registered mail, because

the office is only open three days a week, and no one was there to receive them.

I had very little gasoline and had to make a trip over to Bethesda to pick them up.

I asked him to send them by straight mail so they could be put in the letter slot, which he did not do.

Q. Did there come a time when these payments got in arrears? A. The payments were in arrears, yes.

Q. What, if anything, did you do then? A. We notified him by registered mail we were going to turn it over to the trustees for foreclosure proceeding.

Q. And as a result of that notification to Mr. Wilson, what, if anything, did Mr. Wilson do? A. He came out and told me he was going to refinance, going to get
51 another first trust loan that would pay off our second trust loan and it was agreed he was to do that.

Q. And have you any way or record to tell us how far in arrears this particular property was in the fall of 1945? A. The records are right back there in that seat. I am sorry I did not bring them up with me. They are in a legal sized jacket.

Q. What month of 1945—the fall? A. What month of 1945?

The Court: October.

By Mr. Schaeffer:

Q. I believe it was the day I was out there with Mr. Wilson? A. These records would indicate so far as the first trust is concerned they were up to date. I would have to have those receipt books to give you the information.

(Thereupon, certain books indicated by witness were handed to her.)

The Witness: On September 30, 1945, he paid a balance of the July payment and \$6.50 on the August payment.

There was not another payment until November, 1945, when he paid a balance for August.

On September 6, another one. The receipts will show what the payments are for.

* * * *

52 A. As to all the rest of the payments?

Q. As to the arrears. A. On December 31, 1945, he paid a balance of \$48.50 balance for September.

\$6.50 on October.

On February 11, 1946, \$48.50.

On October, \$6.50.

On November, \$6.50.

On April 3, 1946, \$48.50.

On November, \$6.50.

On December, \$48.50.

On April 4, 1946, \$48.50 on December and \$6.50 on January, 1946.

On April 16, \$48.50 on January.

\$6.50 on February.

On May 20th, \$48.50 on February, \$6.50 on March.

On June 19th, \$46 balance due on March, \$22.50 and \$25—the payment was for \$25. The \$25 applied on March for the balance left on March of \$23.50.

On June 15th, balance of \$23.50.

The next was paid of \$55 on April—

The Court (interposing): These payments you speak about were the latter part of 1945; they were received from whom?

The Witness: I couldn't tell you, Your Honor.

* * * *

54 By Mr. Schaeffer:

Q. I was out to your place with Mr. Wilson in the fall of 1945? A. Correct.

Q. He was advised then he was in arrears, and how much.

He left a check there that day? A. Correct.

Q. And we made arrangements how he would make up the arrears and I believe I told him in your presence from now on to send the money himself and not send it through Mrs. Smith? A. Correct.

Q. And since that time you have been receiving them by check and otherwise from Philadelphia? A. Correct.

Q. And I believe it was you he gave his new address in Philadelphia? A. I have the address on the receipt.

Q. Would you recall 820 Birch Street? A. Yes.

55 Q. 1949 North Ninth Street? A. That was an earlier address—there was an earlier address than that, even. It seems he gave somebody by the name of Fleming.

Q. But so far as you recall since October or November when he was in your office with me, you have been receiving them from Philadelphia, from Mr. Wilson, when he did not come out there? A. Some later ones from Mr. Lindsay, the agent for the house.

Q. He is keeping up the payments from the rent? A. That is what I understand.

The Court: Is he a tenant?

The Witness: No, sir, he is an agent.

The Court: Is that all?

Mr. Schaeffer: Yes, Your Honor.

* * * *

56 Q. All right, Mrs. Farnham, don't you want to correct yourself; as mentioned by Mr. Schaeffer, Mr. Wilson went to you in the fall of 1945; wasn't that 1946?

A. I couldn't truthfully say the time they were out there, today, because I do not recall.

Q. You did testify you had known—

Mr. Millstein: You asked her the question whether it was 1946 and not the fall of 1945.

The Witness: I don't know which it was, to be actually truthful.

* * * *

57 By Mr. Millstein:

Q. When you first became aware of Mr. Wilson, wasn't that about the time that you understood there was some discrepancy as to the ownership of this property? A. No. I never knew any ownership in the property other than of the sales contract. In other words, the sales

contract was made out to Mrs. Smtih and Mr. Wilson, the property itself deeded to both of them, which was done.

* * * *

By Mr. Millstein:

Q. Do you recall in March of 1946 that Mrs. Smith was going to have a payment made to your office? A. She did make a payment to the office.

58 Q. You accepted that payment at that time? A. No.

Q. Why did you turn it down? A. Because I had gotten a communication from the Columbia Title Insurance Company asking the exact amount to pay off the second trust on the property, so the property could be refinanced; a new trust was being drawn.

I gave the exact amount to that date. Therefore, I could not accept any other payments on the property.

The Court: Was this property subsequently refinanced?

The Witness: No, it was not.

By Mr. Millstein:

Q. It was not on account of this suit.

Prior to that time, did you ever see Mrs. Smith? A. I have never seen Mrs. Smith until today.

Mr. Schaeffer: What was that last answer?

The Court: She stated she had never seen Mrs. Smith until today.

By Mr. Millstein:

Q. Is this letter sent by your office? A. Written by me, signed by me, addressed to Mrs. Smith.

Q. Wasn't this sent to her upon inquiry she made with respect to certain payments? A. That is correct.

Mr. Millstein: I want to offer this in evidence, a letter dated August 6, 1945.

59 The Court: It will be received as Plaintiff's Exhibit No. 4.

(The letter referred to was marked and received in evidence as Plaintiff's Exhibit No. 4.)

* * * *

Q. How many times did you receive Western Union money orders? A. Not as many times as I think, because I was terribly annoyed by it. I would not say more than one or two times.

Q. These payments from month to month were received from— A. (Interposing) I could not tell you. I receive hundreds of payments a month.

* * * *

60 Q. You did not know who was sending those payments? A. I entered them in the name of Mr. Wilson, because 2029 Savannah Place was in his name.

* * * *

Redirect Examination

By Mr. Schaeffer:

Q. Just to clear up one point, I am going to hand you a letter (handing letter to witness); will you tell us who it is addressed to? A. July 9, 1946, that is to Mr. Charles L. Schaeffer, signed by Donald L. Chamberlin, holder of the note.

Q. It was sent to me for what reason? A. Because we had sent a letter to Mr Wilson that day notifying him of foreclosure proceedings.

Q. And that was subsequent to the time I was
61 in your office? A. I think it was subsequent because otherwise I would not have known your name.

Mr. Schaeffer: I offer those two letters in there as to the time.

The Court: They will be received.

(The letters referred to were marked and received in evidence as Defendant's Exhibit No. 3.)

* * * *

Agnes Marie Smith, the plaintiff, resumed the witness, being previously duly sworn, testified further as follows:

Direct Examination

By Mr. Millstein:

Q. Mrs. Smith, did you make any improvements on this property while you were in it? A. Yes, I did.

Q. What were they? A. I completed the recreation room and put a fence around the property.

62 Q. What did that cost you? A. \$45 for the flooring.

Q. Who did you pay for that? A. The Quaker City Linoleum Company, at Sixth and F Street.

Q. What other work did you have done? A. A picket, paling fence I put around it.

Q. What did that cost you? A. As near as I can remember, around \$45.

Q. What other work did you have? A. Painting.

Q. Who did you have do that? A. Mr. Hicks.

Q. How much was that? A. Between twenty and twenty-five dollars.

The Court: Inside or outside?

By Mr. Millstein:

Q. Did you have anything else done? A. Storm windows.

Q. Is this the note you signed? A. Yes, that is the note, paid for it myself, \$192.97.

The Court: The date?

The Witness: March 3, 1944.

63 Q. Did Mr. Wilson give you any money towards these disbursements? A. No, he did not.

Q. Now, Mrs. Smith, did Mr. Wilson, he never gave you any payments at all; did he, from 1942 from the time you bought or purchased this house up until the time you were forced out of the premises in July, 1946, did he at any time ever send you any money for you to pay on these mortgages? A. At no time whatever. He has never sent me any money whatsoever to pay on the property.

Q. You are quite certain of that? A. I am quite certain of that.

The Court: Did he sign his name on that?

The Witness: No.

The Court: Who signed that?

The Witness: The man who was putting the windows in.

The Court: This is a note which Agnes M. Smith and (trying to decipher name) for \$192.50 to the Air Conference Group; did you sign that note?

The Witness: The man said it wasn't necessary.

The Court: Did he sign his name to that note?

The Witness: The man said it was not necessary.

The Court: Who signed his name?

The Witness: I don't know.

The Court: Will you sign his name, James Edward Wilson?

You write James Edward Wilson and J. E. Wilson in the same fashion that it is here.

64 (Thereupon, the Court handed a paper and pen to the witness, who wrote on the paper as requested and handed it back to the Court.)

(Thereupon, the signatures written by the witness as requested by the Court were inspected by the Court.)

The Court: You wrote both of these.

The Witness: I did not write both of them.

The Court: Very well.

* * * *

By Mr. Millstein:

Q. How were these payments made on this note? A. I went to the bank and made the payments.

Q. What bank? A. At 15th and I, I think.

Q. The Liberty National Bank? A. Yes, that is right.

65 The Court: We are not concerned with that.

Mr. Millstein: I assume it was paid—

The Court (interposing): That obligation was incurred and she paid it.

Mr. Millstein:

Q. You wrote that? A. Wrote in the bank. I didn't write that.

Q. This is the Liberty National Bank, personal loan department.

The Court: I am concerned with the signature on the note. She says she wrote the top and did not write the second.

I am convinced she did; and if I draw that conclusion, I am convinced she has perjured herself in this court.

Mr. Millstein: In that regard, if the Court please, would it make any material difference with respect to her right in recovering what is rightfully—

The Court: I will come to that.

* * * *

66 Mr. Schaeffer: May I recall my witness with respect to this particular note?

The Court: She has testified he did not sign it.

* * * *

James Edward Wilson, Jr., the defendant, was recalled to the witness stand and upon further examination, testified as follows:

Direct Examination

By Mr. Schaeffer:

Q. When did you first become aware of the fees that were owed? A. I came home on receiving a letter in the mailbox. I didn't know anything—Mrs. Smith had signed my name to the paper. Gave her money to pay for it.

Q. I am speaking about the picket fence. A. I bought the fence on Friday afternoon. I paid \$15 for the nails; so much for the paint; \$15 for the paling; \$37.50 for the

inlay on the flooring; the storm door, \$59.74 from the Hecht Company.

The Court: I make a finding for the defendant.

I find for the defendant.

This witness perjured herself. She has been lying
67 under oath. If she will tell a lie under oath she
will tell lies.

You are not responsible for that.

We will now adjourn.

(Thereupon, at 2:40 o'clock p. m., the trial of the above case was concluded.)

* * * *

EXHIBITS

APPELLANT'S EXHIBIT I

Phone LI. 5563

DOUGLASS HEIGHTS

Chamberlin Engineering Company

Owners and Developers

50 Kennedy Drive

Kenwood, Chevy Chase, Md.

Date May 29, 1942

Filed Oct 1 1947 Harry M. Hull, Clerk

\$150.00

Received of James E. Wilson, Jr., and Agnes Marie Smith, a deposit of One hundred and fifty Dollars, to be applied as part payment in the purchase of Lot 46 Square 5895 with improvements thereon known as No. Savannah Place, S. E. on the following terms, viz:

Price of property Five thousand five hundred and fifty dollars

TERMS Four hundred and fifty dollars (\$450.00) cash, of which this deposit is a part.

Purchaser to assume a deed of trust of \$3,650.00 with interest at 6 per cent per annum payable principal and interest monthly \$.....

Balance of \$1,450.00 to be paid in monthly instalments of \$....., including interest at 6 per cent per annum payable Chamberlin Engineering Company

Seller agrees to pay John P. Murchison, broker, seventy dollars commission.

Deferred payments on above-described property to be secured by Deed of Trust to trustees named by the party to be secured.

The title is to be good of record and in fact, or the deposit is to be returned at the option of purchaser.

Rent, taxes, water rent, insurance and interest on existing encumbrances, if any, are to be adjusted to date of transfer.

Examination of title, conveyancing, notary fees and all recording charges are to be at the cost of the purchaser.

The purchaser agrees to comply with the herein terms of sale within 30 days from date of acceptance by the owner (or at such time as a report on title can be had) or deposit will be forfeited, but the forfeiture of the deposit shall not relieve the purchaser from the responsibility of complying with the terms of sale.

This contract is made subject to the approval of the owner, and contains the final and entire agreement between the parties hereto, neither of whom shall be bound by any terms, statements, conditions or representations, oral or written, not contained herein.

It is understood that the above property is sold subject to restrictions of record.

This contract is made in triplicate.

No renewal of either Deed of Trust required.

Closing expenses including title examination to be paid by purchaser.

Monthly payment of \$55.00 pays principal, interest, taxes and insurance on both Deeds of Trust. Monthly payment is reduced when 2nd Deed of Trust is fully paid.

Property to be deeded to James E. Wilson, Jr., & Agnes Marie Smith, joint tenants.

ARNETT G. LINDSAY

By Arnett G. Lindsay

Accepted by

JAMES E. WILSON, Purchaser

AGNES M. SMITH, Purchaser

Address

Tel. No.

Chamberlin Engineering Company

OK D. C.

Date, 19.....

\$300 pd. 6/29/1942 AGL

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APPELLANT'S EXHIBIT III

Philadelphia Pennsylvania

August 20th 1943.

TO WHOM IT MAY CONCERN

I James E. Wilson of 1350 Ridge Ave. Phila. Penna. Do hereby swear I was Born April 20th. 1920 at Philadelphia Pennsylvania.

JAMES EDWARD WILSON, JR.

1350 Ridge Ave.

Philadelphia, Pennsylvania

Philadelphia Pennsylvania Aug 20 1943

Sworn and subscribed before me

WILLIAM PINDER

Notary Public

662 N. 15th St., Phila., Pa.

Commission Expires Feb. 6, 1947

Philadelphia, Pennsylvania

We Harry Banks of 5907 West Thompson Street Phila. Penna. and Joseph J. Jacobs of 541 North 13th. Street Phila. Penna. Do hereby swear the Statement made by James E. Wilson is true.

HARRY BANKS
5907 W. Thompson St.
JOSEPH JACOBS
541 No. 13th St.
Philadelphia, Pennsylvania

Sworn and subscribed before me

WILLIAM PINDER

Notary Public

662 N. 15th St., Phila., Pa.

Commission Expires Feb. 6, 1947

* * * *

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APPELLANT'S EXHIBIT IV

Donal L. Chamberlin, C. E.
Registered Professional Engineer
50 Kennedy Drive
Kenwood, Chevy Chase 15, Md.

Please address reply to—

August 6th 1945.

Mrs. Agnes Marie Smith,
2029 Savannah Place S. E.
Washington 20 D. C.

Dear Mrs. Smith:

Thank you for your letter of August 3rd 1945 relative to the payments on the above numbered house.

As you probably know the account was behind a month for some time and I am listing below the date of the payments and the month they paid.

1943

Dec 13 55.00 Nov Pay

1944

Jan 11th 55.00 Dec Pay

Feb 24th 55.00 Jan Pay

March 23 55.00 Feb Pay

April 24 75.00 Mar pay and \$20.00 on Apr.

May 31 55.00 35.00 on Apr 20.00 on May

June 30th 50.00 35.00 on May 15.00 on June

July 31 55.00 40.00 on June 15.00 on July
 Aug 31 52.00 40.00 on July 12.00 on Aug
 Sept 11 57.00 43.00 on Aug 14.00 on Sept
 Oct 17 25.00 25.00 on Sept
 Nov 30th 55.00 16.00 on Sept 39.00 on Oct
 Dec. 28th 55.00 16.00 on Oct 39.00 on Nov
 1945
 Feb 5th 55.00 16.00 on Nov 39.00 on Dec.
 Mar 8th 20.00 16.00 on Dec 4.00 on Jan
 Mar 21 35.00 35.00 on Jan
 March 31 55.00 16.00 on Jan 39.00 on Feb
 May 16th 27.50 16.00 on Feb 11.50 on Mar
 May 16th 50.00 43.50 on Mar 6.50 on Apr
 June 28th 55.00 48.50 on Apr 6.50 on May
 July 31st 55.00 48.50 on May 6.50 on June.

Where the trouble arose was Mr. Wilson sent us odd amounts as payments and the whole accounts got confused .

72 To bring the account up-to-date you should send us the remainder of the June payment of \$48.50, the July payment of \$55.00 and the August payment of \$55.00.

You can check my figures with the statement that is sent to you twice a year and which Mr. Wilson should have among his papers.

According to my records the account was not behind until the November payment of 1943.

Trusting that this will straighten out your inquiry, I am

Very truly yours,

RUTH H. FARNHAM

* * * *

\$192.97

For value received I we promise to pay to the order of Air Comfort Corporation

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Washington, D. C., March 3, 1944
One hundred ninety two and 97/100 - - - - - Dollars
with interest at the rate of 6 per cent per annum after maturity, negotiable and payable at the
LIBERTY NATIONAL BANK of Washington, D. C., in the following installments:

\$8.04 on 4/3/44 and \$8.04 on the 3th day of each succeeding month until 23 inclusive
and \$8.05 on 3/3/46 and further agree that failure in the payment of any installment shall render the
entire note due and payable on demand at the option of the holder. The maker or makers and all
other parties hereto, whether endorsers, sureties or guarantors, severally waive presentment, de-
mand, protest and notice of dishonor, and if this note or any installment be not paid when due
hereby authorize any attorney of any court of record to appear for us or either of us in such court
and confess judgment without process in favor of the holder for such amount as may be due and
unpaid hereon with costs of suit and 15 per cent attorneys' fee, hereby waiving all right of appeal
and stay of execution. The maker or makers further agree to pay a charge of five cents per dollar
on each installment more than fifteen days in arrears. The late charge, however, shall not exceed
\$5.00 in respect to any one late payment. This note is made in accordance with the provisions of
the NATIONAL HOUSING ACT as amended, and, and under regulations of the FEDERAL
HOUSING ADMINISTRATION.

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APPELLANT'S EXHIBIT V

/s/ AGNES M. SMITH
/s/ JAMES EDWARD WILSON
AGNES M. SMITH
JAMES EDWARD WILSON

Address

OK 24 mo.
\$175.25
Beg. 30 days

No. 9683

BRIEF IN BEHALF OF APPELLEE

United States Court of Appeals
for the District of Columbia

*United States Court of Appeals
for the District of Columbia*

AGNES MARIE SMITH

Appellant,

vs.

JAMES E. WILSON,

Appellee.

FILED MAR 3 1948

Joseph W. Stewart
CLERK

Appeal from the District Court of the United States
for the District of Columbia

CHARLES A. SCHAEFFER,
406 Fifth Street, N.W.

KENNETH D. WOOD,
204 Century Bldg.,
Attorneys for Appellee.

United States Court of Appeals for the District of Columbia

No. 9683

AGNES MARIE SMITH,
Appellant,

vs.

JAMES E. WILSON,
Appellee.

Appeal from the District Court of the United States
for the District of Columbia

BRIEF FOR APPELLEE

I

COUNTER STATEMENT OF THE CASE

The appellee, James E. Wilson, purchased the premises 2029 Savannah Place, S.E., in his own name and with his funds alone. The contract of sale (app. 34) was executed by both the parties to this action for the reason that the defendant was an infant. It subsequently developed that the plaintiff had against her an unsatisfied judgment. Inasmuch as this impediment precluded the plaintiff's taking the property jointly with the defendant, it was then deeded to the defendant alone.

The deed was given to Wilson who retained it. Prior to his entry into the service of the Maritime Service, he, Wilson, had a conversation with Mrs. Smith concerning the Savannah Place property (app. 19). Mrs. Smith's sugges-

tion that "you could leave the property to someone to look after it while you are away" (app. 19) was accepted by Wilson, who then deeded the property to a Carle Turner, an employee of the title company, who in turn executed a deed to the parties to this cause as joint tenants.

As indicated by the testimony of Wilson concerning the conversation with Mrs. Smith prior to his entering the Maritime Service, "we won't have it recorded. If anything happens, you can have the deed," (app. 19); Wilson retained possession of this second deed to the parties as joint tenants and made no effort to have it recorded.

The purchase money was supplied by Wilson as was the subsequent payments on the note. There was never any intention on the part of Wilson that Mrs. Smith should have any interest in the property. At her suggestion the joint deed was executed, predicated on the possibility of Wilson's death during his connection with the Maritime Service. The trial court found that the testimony of Mrs. Smith concerning her part in the purchasing of the property was unworthy of belief, and found for the defendant (app. 34).

SUMMARY OF ARGUMENT

1. Defendant purchased the property with his own funds, plaintiff contributing nothing toward the purchase price nor the payments on the note.
2. Plaintiff's only interest in the property was predicated on a condition subsequent.
3. Plaintiff's testimony was unworthy of belief.

ARGUMENT

Lack of Intention on Part of Defendant That Any Title Be Vested in Plaintiff

The evidence adduced by the defendant clearly shows that there was no intention on his part that the plaintiff should be seized of the property in question. There was no de-

livery of the deed to the plaintiff which ordinarily would manifest an indication that she was a joint owner, particularly in view of the fact that the defendant was about to enter the Maritime Service. It would appear that if the defendant had been in fact a joint tenant with the plaintiff, the logical, reasonable and simplest means of expression would have been to present her with the deed to be recorded, or to have it recorded and deliver it to her for safe keeping while he was away.

The only evidence indicating that the defendant was to record the deed was given by the plaintiff, and her testimony was found to be unworthy of belief by the trial court. The defendant, in relating his conversation with the plaintiff, (app. 19) concerning recording of the deed, informed her "We won't have it recorded. If anything happens, you can have the deed."

As pointed out in *United States of America ex rel. Sykes v. Lane*, 49 App. D. C. 48, 258 Fed. 520:

"The mere signing of a deed does not constitute delivery of it, and unless it is delivered it cannot be said to be executed."

There was never any intention that there should be a delivery of the instrument involved here, and only upon the contingency of death was the plaintiff entitled to have the property.

In *Harrington v. Harrison*, 62 Fed. Supp. 449, the court said:

"To effect a delivery of a deed no particular form is required and it may be by acts, by words, or by both, but there must be an intention that the deed be delivered."

TESTIMONY OF PLAINTIFF

As was indicated by the trial justice, "I find for the defendant. This witness has perjured herself. She has been lying under oath" (app. 34). The Court, while inquiring

about a note in the sum of \$192.50 to the Air Conference Group, regarding alleged work done on the premises, (app. 39) was concerned with the signatures "Agnes M. Smith" and "James Edward Wilson." The plaintiff was asked whether the defendant signed the note to which she answered she did not know (app. 32). Thereupon, the Court had the plaintiff write the names appearing on the note, "Agnes M. Smith" and "James Edward Wilson." After examination of the signature, the Court had this to say, "I am concerned with the signature on the note. She says she wrote the top and did not write the second. I am convinced she did; and if I draw that conclusion, I am convinced she has perjured herself in this Court" (app. 33).

As this Court has pointed out on numerous occasions, a finding by the trial Court based on conflicting testimony will be overridden only in the clearest case; and as here, where the trial Justice had the opportunity to hear and observe the witnesses during their testimony, his finding should be followed unless it is apparent that the court is clearly in error.

CONCLUSION

It is respectfully submitted to this Honorable Court, that the trial Justice predicated his finding upon the testimony and observation of the witnesses during the trial of the cause; that his conclusion is sustained by the evidence and that his judgment should not be disturbed.

Respectfully submitted,

CHARLES A. SCHAEFFER,
406 Fifth Street, N.W.

KENNETH D. WOOD,
204 Century Bldg.,
Attorneys for Appellee.

